Denver Law Review

Volume 34 | Issue 5 Article 5

May 2021

Marketable Title - What Certified Copies of Court Papers Should Appear of Record - An Addendum

Royal C. Rubright

MARKETABLE TITLE – WHAT CERTIFIED COPIES OF COURT PAPERS SHOULD APPEAR OF RECORD – AN ADDENDUM

By Royal C. Rubright

Royal C. Rubright received his B.A., LL. B., and LL. M. degrees from the University of Colorado. He has served as an Instructor of Law at the University of Denver, as Lecturer at the University of Colorado and has contributed several previous articles on real property law to DICTA and the Rocky Mountain Law Review. Mr. Rubright is President of the Denver Bar Association and a member of the Colorado and American Bar Associations. He is a partner in the Denver firm of Fairfield and Woods.

The original article in the January-February 1957 issue of DICTA[1] attempted to set down the consensus of most lawyers about recording practice. Some able lawyers—and a judge—have mentioned certain points which should be clarified.

Division VII 3(a), referring to discharge of an executor and vesting title in a testamentary trustee, stated that the court *must* make a finding that the testator intended the court should not retain jurisdiction of the trust. That statement is too strong. The statute actually states: "If . . . it shall *appear* to the county court that it was not the intention of the testator that the court should continue the administration of the estate . . ."[2]

Assume that the will contains a statement something like the following: "I intend that the trust shall be administered free from jurisdiction and control of the court in which my estate is administered, and that the court shall not continue administration of my estate after final settlement thereof but shall order the trust fund to be turned over, conveyed and delivered to my trustee as such."

It thus *appears* to the county court that the testator intended to free the testamentary trustee from court supervision. Under the practice in Denver, the court, on final settlement, will approve a receipt signed by the testamentary trustee and will then discharge the executor.

If no equivalent language is contained in the will, the court will not permit the executor to take the final receipt from the trustee until the trustee has qualified by taking the oath as such and giving bond to the court. In this case, letters of testamentary trusteeship are issued.

In the light of this typical procedure it is better practice for the order of discharge of the executor to contain a finding—which the attorney should prepare himself—that the testator intended to free the testamentary trust from court control. The presence or absence of such a finding is not, however, indispensable and if inspection of the estate file shows no oath, bond nor letters, then paragraph 3(a)

[1] Rubright, Marketable Title—*What Certified Copies of Court Papers Should Appear of Record*, 34 DICTA 7 (1957).
[2] Colo. Rev. Stat. Ann. § 152-14-11 (1953) (emphasis added).

of the article applies. The finding would obviate a trip to the court to inspect the file.

Two additional comments are necessary with respect to Division I of the original article. The reference to the year 1958 with respect to recording should refer to recording of the old *receipt* for inheritance tax which contained a description of property. Recording of the *release* of inheritance tax lien has been required by the express terms of the statute since 1943.[3]

In addition to the steps for protecting a purchaser against a federal estate tax lien mentioned on page eight of the original article, the provisions of the Internal Revenue Code of 1954, section 6324, afford protection to a bona fide purchaser of real property from the estate. If the proceeds of sale are used to pay charges against the estate and expenses of administration, the federal estate tax lien is divested from the property sold. Estates which are large enough to be subject to federal estate tax nearly always involve a will which gives the executor power of sale without court order. Normally, no court orders are obtained. However, in order to secure the protection of the federal statute, an order confirming sale pursuant to statute[4] could be obtained and not recorded, finding the necessity for the sale and requiring that the proceeds shall be used to pay such charges and expenses.

[3] Colo. Rev. Stat. Ann. 138-4-61 (1953).
[4] Colo. Rev. Stat. Ann. 152-13-25 (1953).

Welcome

The Shepard Representative

He is a citation specialist and can be of service to you.

He comes to your office to help you solve one of the most important problems in legal research and to demonstrate that our solution insures both speed and accuracy.

The Shepard representative will show you how to use every feature in the greatly improved Shepard service, which is practical and economical—in fact indispensable —and which embodies the highly specialized skill and knowledge we have acquired over a period of 85 years.

The citation specialist is chosen for his courtesy and his ability and is trained to help the legal profession in every possible way.

He will gladly assist you with your citation problems and show you how to avoid errors and possible embarrassment in matters pertaining to legal research.

Welcome the one who comes to see you.

Shepard's Citations

Colorado Springs

Colorado